

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In the matter of:

Janet Ann McCarthy

Case No. 12-11665

Judge Buchanan

Debtor

**MOTION OF THE CHAPTER 7 TRUSTEE, PURSUANT TO 11 USC 327(A),
TO EMPLOY FREESE & GOSS, PLLC, *NUN PRO TUNC*, TO PROSECUTE
PERSONAL INJURY CLAIM**

This Application is made pursuant to 11 U.S.C.327(a) and LBR 2014-1 [Employment of Professionals] by George Leicht, the Chapter 7 Trustee in this case, for an Order authorizing the employment of Freese & Goss, PLLC , *nun pro tunc*, as special counsel for the Trustee to prosecute a damage claim of Janet Ann McCarthy.

The trustee's memorandum in support of this application along with an affidavit is attached.

/s/ George Leicht

George Leicht, Ohio Reg. 0019698
Attorney for Chapter 7 Trustee
PO Box 602
Batavia, OH 45103-0602
(Tel.) 513.734.4848

MEMORANDUM IN SUPPORT OF APPLICATION
JURISDICTION

1. This Court has jurisdiction over this Application under 28 U.S.C. § 1334. Venue of this proceeding is proper in this District pursuant to 28 USC. § 1408 and 1409. The subject matter of this Application is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory basis for the relief requested

herein are sections 105(a), 327, 1107 and 1108 of title 11 of the Bankruptcy Code, Rules 2014 and 5002 of the Federal Rules of Bankruptcy Procedure, and LBR 2014-1.

BACKGROUND

2. On March 28, 2012, the Debtor filed an original petition under Chapter 7. The debtor was examined by the Movant pursuant to 11 USC 341 and a report of no assets was filed on May 8, 2012. The within case was closed on August 1, 2012.

3. Subsequently, the Movant received notice that the debtor had a personal injury claim related to transvaginal mesh (the "Claim"). The debtor subsequently retained Freese & Goss, PLLC to represent her in the prosecution of the claim which existed at the time the debtor filed her Chapter 7 petition.

4. On May 16, 2017 the United States Trustee moved to reopen this case (doc. no. 14). The case was reopened by the Court on May 23, 2017 (doc. no. 16) and a Notice of Appointment of the undersigned trustee was made on May 24, 2017 (doc. no. 17).

5. The trustee has subsequently been in contact with Freese & Goss, PLLC and believes the debtor will may receive a significant settlement for her Claim.

6. Under the terms of the original retention agreement Freese & Goss, PLLC was to receive a fee of forty percent (40%) of any recovery plus expenses. A copy of the retention agreement is attached hereto as Exhibit A.

7. The Trustee believes it is in the best interest of the estate that Freese & Goss, PLLC be retained by the Bankruptcy Estate to continue to prosecute this claim because of its unique familiarity with the facts and issues of the case and because the firm is qualified to prosecute said action.

RELIEF REQUESTED

8. The trustee seeks an Order authorizing the trustee to retain Freese & Goss, PLLC under the same terms as the original retention agreement.

9. To the best of the trustee's knowledge, based upon a review of the affidavit of Peter de la Cerda the law firm and its principals (i) do not have connections with the Debtor, their creditors, or any other party in interest, or their respective attorneys, (ii) are "disinterested persons" as defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and (iii) do not hold or represent an interest adverse to the estate. The affidavit of Peter de la Cerda is attached hereto as EXHIBIT B.

WHEREFORE, the Trustee respectfully requests that an Order be entered in this case in a form substantially in the form of EXHIBIT C, that he be authorized, pursuant to 11 USC 327(a) and in accordance with Rule 2014(a) of the Federal Rules of Bankruptcy Procedure and Local Rules to employ and retain Freese & Goss PLLC as Special Counsel for the prosecution of the debtor's Claim under the same terms and conditions as set forth in the original retention agreement and for other relief as may be proper.

/s/ George Leicht

George Leicht, Ohio Reg. 0019698
Attorney for Chapter 7 Trustee

EXHIBIT A
Retention Agreement

The undersigned client (the "Client") hereby appoints Freese & Goss, PLLC and Matthews & Associates (hereinafter, the "Firms") as Client's attorneys at law and in fact to investigate, prepare and prosecute any claim or suit for personal injuries suffered by Client. *MN*

I. BASIS FOR CONTRACT

Client hereby retains the Firms to represent him/her in connection with his/her claim against all responsible parties (except those parties set forth in paragraph VI below) including, but not limited to manufacturers and distributors, arising out of the placement of the **Transvaginal Mesh/Sling/OBTape**. Client authorizes the Firms to associate co-counsel as the Firms may deem necessary and to share any fees contemplated in this contract with such co-counsel with the express understanding that associating with co-counsel will NOT increase the fees set forth in Paragraph III below. *AF*

After the appropriate investigation, Firms reserve the right to rescind this contract. Client hereby fully empowers, authorizes and directs said attorneys to manage and handle, as they deem necessary, best and proper, said claim, cause of action, suit or suits that may grow out of the same, and to prosecute said causes of action with or without suit in any manner they deem advisable. They are hereby authorized and empowered to deliver in Client's name any and all notices, receipts, authorizations, releases, pleadings and any other documents and instruments proper in the handling of said claim.

II. CLIENT'S COOPERATION

The Client agrees to cooperate fully with the Firms, disclose all relevant facts and promptly advise the Firms of any change in address or telephone number. The client authorizes the Firms to use their professional judgment and any relevant documents, records or other information that the Firms deem necessary to the proper representation of the Client. The Client agrees to promptly comply with all reasonable requests of the Firms on all matters included in this contract. The Client understands that failure to fully cooperate may be a basis for termination of this contract. Client further agrees that the Firms may withdraw from representing the Client if the Firms deem withdrawal warranted.

III. CONTINGENT FEE ARRANGEMENT

The Firms will assume joint responsibility for representation of the client. In consideration of the services rendered and to be rendered to the Client by the Firms, the Client agrees to grant to the Firms for the Firms' compensation in handling the Client's lawsuit in the following present undivided interest and assignment in the claims and the lawsuit: 40% to be shared equally between Freese & Goss, PLLC and Matthews & Associates. The fee percentage calculation will be made based on the gross recovery before deduction of any expenses. **In the event there is no recovery Client owes the Firms nothing.**

Client agrees the Firms are the exclusive firms representing the Client. Should Client hire additional firms and/or attorneys, Client understands that Client may be responsible for the payment of more than one attorneys' fee and the expenses of each firm and/or attorney, which will become due upon receipt by Client of any proceeds for Client's claim. Moreover, Client can terminate the Firms' representation of Client at any time by providing written notice to the Firms at the address of their principal offices. Should Client elect to terminate the Firms' representation prior to the full conclusion of the Firms' services under this Contract, Client understands that the Firms may have a claim under applicable state law for expenses of litigation, other disbursements, and attorneys' fees which will become due upon receipt by Client or by any successor attorney of any proceeds for Client's claim.

IV. EXPENSES FOR THE LAWSUIT

The Firms agree to pay for any and all reasonable expenses associated with the prosecution of client's claim. In the event there is no recovery there is no fee to the client.

In the event of a recovery, the Client understands and agrees that Firms will be paid all reasonable costs, charges or expenses made or incurred by the Firms in the Firms' handling of the Client's claim and causes of action, including but not limited to expenses or charges for obtaining medical records, court costs, filing fees, depositions, and expert witnesses. Client understands that Attorneys may represent numerous other similarly injured clients, and Client agrees that the term "expenses" includes general expenses incurred for the benefit of all such similarly injured clients, including but not limited to retaining and compensating experts, copying voluminous documents, postage, research, computerized document management, conference calls, jury consultants, travel, and costs relating to the depositions of defend ants' representatives, witnesses, and agents. Such general expenses will be prorated among all claimants in a settlement group.

V. RECORDS

Obtaining Client's records is essential to pursuing client's claim. The Firms may use other companies to obtain Client's medical records and the fees paid to these companies are part of the case expenses that will be deducted from the total recovery, if any, obtained by Client. The owners of the Firms may own an interest in these companies, and these companies charge competitive rates for their services. By signing this contract, Client hereby consents to the use of such companies and waives any and all conflicts.

VI. INTENT NOT TO SUE DOCTORS

NONE OF YOUR DOCTORS WILL BE SUED. Client understands that Client may have a medical malpractice claim against the doctor(s), or any healthcare provider working with or for the doctor(s) who prescribed any drug or device, performed any surgery, or was responsible for diagnosing any condition, or providing any treatment that contributed to Client's injury and/or monitored Client's progress while treating with the drug or after any device was implanted. Client understands and agrees that the Firms will not investigate, and will not pursue, a medical malpractice action or any other claim against said doctor(s) or healthcare providers. Client also understands that the drug/device companies attorneys may convince the jury of the doctor's or healthcare provider's fault, Client's total recovery, if any, may be reduced by that the portion of fault, if any, attributed to the doctor(s) or healthcare providers by the jury.

EXECUTED this 10 day of March, 2013.

ACCEPTED BY:

CLIENT SIGNATURE

CLIENT (PRINTED NAME)

SIGN HERE

**FREESE & GOSS, P.L.L.C.
MATTHEWS & ASSOCIATES**

On behalf of the Firms

EXHIBIT B

AFFIDAVIT OF PETER de la CERDA

UNITED STATES BANKRUPTCY COURT
Southern District of Ohio (Cincinnati)

IN RE:

Janet Ann McCarthy,
11665

Case No. 1:12-bk-

Debtor.

AFFIDAVIT OF DISINTEREST PURSUANT TO BANKRUPTCY RULE 2014(a)

STATE OF TEXAS)
)ss.
COUNTY OF DALLAS)

NOW COMES Peter de la Cerda, who makes the following statement under oath:

1. I am an attorney authorized to practice my profession under the laws of the State of Texas.
2. I am experienced in personal injury law, and am currently an attorney with Freese & Goss, PLLC.
3. The trustee has asked that I perform the professional services as set forth on the trustee's application for employment on behalf of the estate. I am experienced and qualified in the matters for which I am to be employed as set forth in the Application.
4. Neither I nor the firm with which I am associated:
 - a. are a creditor, an equity security holder or an insider of the debtor;
 - b. are an investment banker for any outstanding security of the debtor;
 - c. are or have been, within three years before the date of the filing of the petition in this case, an investment banker for securities of the debtor, or an attorney for an investment banker in connection with securities of the debtor;
 - d. are or have been, within the two years before the date of the filing of the petition in this case, a director, officer, or employee of the

debtor or an investment banker specified in subparagraph b or c;
and

- e. have any interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph b or c, or for any other reason.
- 5. To the best of my knowledge, neither I nor the firm with which I am associated hold or represent any interest adverse to the interest of the estate. Neither I nor the firm with which I am associated has any connection with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except as described as follows: None
- 6. Neither I nor the firm with which I am associated has shared or agreed to share and will not share or agree to share, any compensation paid to it with any other person except: Matthews and Associates
- 7. The contingent rate(s) charged by our firm are as follows: 40% of any and all amounts recovered before expenses. In addition to our firm's compensation, we are entitled to be reimbursed for the reasonable costs of prosecution of the claim.

I understand that I must keep detailed records of expenses.

Dated this 17th day of July, 2017

/s/ Peter de la Cerda
Peter de la Cerda

Subscribed and sworn to before me
this 17th day of July, 2017

/s/Haawa Wasswa
Haawa Wasswa
Notary Public, State of Texas
My commission expires: 06-1-2021

EXHIBIT C
PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In the matter of:

Janet Ann McCarthy

Case No. 12-11665

Judge Buchanan

Doc No. _____

Debtor

**ORDER AUTHORIZING THE CHAPTER 7 TRUSTEE TO EMPLOY FREESE &
GOSS, PLLC *NUNC PRO TUNC***

This matter coming to be heard upon the Motion (Doc. No. ____) of the Trustee for an Order authorizing the Trustee to retain the debtor's attorney, Freese & Goss, PLLC *nunc pro tunc* to provide services to the bankruptcy estate under the terms set forth in the motion.

The court having considered the foregoing Application of the trustee to employ Freese & Goss, PLLC to prosecute a pending cause of action and the affidavit of Peter de la Cerda in support thereof; and it appearing that neither Peter de la Cerda nor Freese & Goss, PLLC hold any interest adverse to the debtor or to her estate with respect to the matter upon which such attorney and firm is to be employed, and that the employment of said Freese & Goss PLLC is in the best interest of this estate, it is hereby,

ORDERED that George Leicht, trustee herein, is authorized to employ Freese & Goss, PLLC *NUNC PRO TUNC* as Special Counsel for the trustee and the estate for the purposes of prosecution of the Debtor's Claim.

ORDERED FURTHER, that settlement of the pending claims shall be subject to the approval of this Court.

ORDERED FURTHER that Compensation to be paid in such amounts as may be allowed by this court upon proper application or applications therefore.

SO ORDERED

Service list

Default list with additional parties:

Freese & Goss, PLLC
Att: Peter de la Cerda, Esq.
3500 Maple Avenue
Suite 1100
Dallas TX 75219

Garrett Resolution Group
Att: Cindy McMohon
6281 Tri-Ridge Boulevard
Suite 300
Cincinnati, OH 45140

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In the matter of:

Janet Ann McCarthy

Case No. 12-11665

Judge Buchanan

Debtor

FORM 20A NOTICE

George Leicht, Chapter 7 Trustee in the above captioned case has filed a motion to employ Freese & Goss, PLLC as special counsel for the Trustee.

Your Rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case, (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief requested in the motion (or objection) then on or before **21 days from the date of service stated below**, you must file with the Court a response explaining your position by mailing your response by regular U.S. Mail to Clerk of U.S. Bankruptcy Court, Atrium Two, Suite 800, 221 East Fourth Street, Cincinnati, Ohio 45202 the OR your attorney must file a response using the Court's ECF System.

The Court must **receive** the response on or before the date above.

You must also send a copy of your response either by 1) the Court's CEF System or by regular U.S. Mail to

- George Leicht, Chapter 7 Trustee, P.O. Box 602, Batavia, OH 45103
- Office of the U.S. Trustee, Suite 2030 URS Building, 36 E. Seventh Street, Cincinnati, OH 45202
- To the Debtor's attorney and to any other parties named on the service list.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

DATE OF SERVICE July 18, 2017

/s/ George Leicht

George Leicht, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
DIVISION

IN RE: JANET ANN MCCARTHY

CASE NO: 12-11665

**DECLARATION OF MAILING
CERTIFICATE OF SERVICE**

Chapter: 7

ECF Docket Reference No.

Judge:

Hearing Location:

Hearing Date:

Hearing Time:

Response Date:

On 7/18/2017, I did cause a copy of the following documents, described below,

MOTION OF THE CHAPTER 7 TRUSTEE, PURSUANT TO 11 USC 327(A), TO EMPLOY FREESE & GOSS, PLLC, NUN
PRO TUNC, TO PROSECUTE PERSONAL INJURY CLAIM ,

to be served for delivery by the United States Postal Service, via First Class United States Mail, postage prepaid, with
sufficient postage thereon to the parties listed on the mailing matrix exhibit, a copy of which is attached hereto and
incorporated as if fully set forth herein.

I caused these documents to be served by utilizing the services of BK Attorney Services, LLC d/b/a certificateofservice.com,
an Approved Bankruptcy Notice Provider authorized by the United States Courts Administrative Office, pursuant to Fed.R.
Bankr.P. 9001(9) and 2002(g)(4). A copy of the declaration of service is attached hereto and incorporated as if fully set forth
herein.

DATED: 7/18/2017

/s/ George Leicht

George Leicht 0019698

Law Offices of George Leicht 12-11665

PO Box 602

Batavia, OH 45106

513 734 4848

gpl@fuse.net

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
DIVISION

IN RE: JANET ANN MCCARTHY

CASE NO: 12-11665

**CERTIFICATE OF SERVICE
DECLARATION OF MAILING**

Chapter: 7
ECF Docket Reference No.
Judge:
Hearing Location:
Hearing Date:
Hearing Time:
Response Date:

On 7/18/2017, a copy of the following documents, described below,

MOTION OF THE CHAPTER 7 TRUSTEE, PURSUANT TO 11 USC 327(A), TO EMPLOY FREESE & GOSS, PLLC, NUN PRO TUNC, TO PROSECUTE PERSONAL INJURY CLAIM ,

were deposited for delivery by the United States Postal Service, via First Class United States Mail, postage prepaid, with sufficient postage thereon to the parties listed on the mailing matrix exhibit, a copy of which is attached hereto and incorporated as if fully set forth herein.

The undersigned does hereby declare under penalty of perjury of the laws of the United States that I have served the above referenced document(s) on the mailing list attached hereto in the manner shown and prepared the Declaration of Certificate of Service and that it is true and correct to the best of my knowledge, information, and belief.

DATED: 7/18/2017



Jay S. Jump
BK Attorney Services, LLC
d/b/a certificateofservice.com, for
Law Offices of George Leicht 12-11665
George Leicht
PO Box 602
Batavia, OH 45106

CASE INFO

1 LABEL MATRIX FOR LOCAL NOTICING
06481
CASE 1-12-BK-11665
SOUTHERN DISTRICT OF OHIO
CINCINNATI
TUE JUL 18 10-42-02 EDT 2017

2 ASST US TRUSTEE CIN
OFFICE OF THE US TRUSTEE
36 EAST SEVENTH STREET
SUITE 2030
CINCINNATI OH 45202-4457

3 CITIBANK
PO BOX 790034
ST LOUIS MO 63179-0034

4 DISCOVER
PO BOX 6103
CAROL STREAM IL 60197-6103

5 DISCOVER BANK
DISCOVER PRODUCTS INC
PO BOX 3025
NEW ALBANY OH 43054-3025

6 HAMILTON COUNTY CLERK COURTS
MUNICIPAL COURT
1000 MAIN STREET
CINCINNATI OH 45202-1285

7 NAVIENT CFC
CO NAVIENT SOLUTIONS LLC
PO BOX 9640
WILKES-BARRE PA 18773-9640

8 SALLIE MAE
PO BOX 9500
WILKES BARRE PA 18773-9500

9 UNITED COLLECTION BUREAU
5620 SOUTHWYKE BLVD
TOLEDO OH 43614-1501

10 WELTMAN WEINBERG REIS CO LPA
175 S THIRD STREET SUITE 900
COLUMBUS OH 43215-5166

11 GEORGE LEICHT
PO BOX 400
202 EAST PLANE STREET
BETHEL OH 45106-1402

DEBTOR

12 JANET ANN MCCARTHY
3801 DINA TERRACE
APT 10
CINCINNATI OH 45211-6527

13 LYNN LAPE
3435 CORRINE AVE
CINCINNATI OH 45238-2002

DEBTOR

14 JANET ANN MCCARTHY
3618 SCHWARTZE AVENUE
APT 4
CINCINNATI OH 45211